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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA, ) Cr. S-03-0103-FCD  
11 )  
Plaintiff, )  
12 )  
v. ) GOVERNMENT'S MOTION  
13 ) AND PROPOSED ORDER TO  
KAMALJIT SINGH KHERA, ) CORRECT TRANSCRIPT  
14 ) PURSUANT TO FEDERAL RULE OF  
Defendant. ) APPELLATE PROCEDURE 10(e)  
15 )

16 The government hereby moves, pursuant to Fed. R. App. P. 10(e),  
17 to correct an error in the transcription of the sentencing  
18 proceedings which occurred on January 30, 2006.

19 On January 30, 2006, this Court, in sentencing the defendant,  
20 considered the issue of the applicability of the sentencing  
21 guideline provision U.S.S.G. § 2D1.1(b)(1) which provides: "if a  
22 dangerous weapon (including a firearm) was possessed, increase by 2  
23 levels." The notes provide: "The adjustment should be applied if  
24 the weapon was present, unless it is clearly improbable that the  
25 weapon was connected with the offense." U.S.S.G. 2D1.1(b)(1),  
26 Application Note 3 (emphasis added). The defendant has raised this  
27 issue on appeal in C.A. No. 06-10102, currently pending in the  
28 United States Court of Appeals for the Ninth Circuit.

1 In several instances, the transcription reflects that the  
2 district court used the term "clearly and probable" instead of the  
3 term, "clearly improbable." R.T. 833: 25, 834;9, 11-12, 15-16. It  
4 is clear from the context and from this Court's action in imposing  
5 the enhancement, and consistent with the undersigned's recollection,  
6 that this Court properly applied the "clearly improbable" standard  
7 contained in U.S.S.G. 2D1.1.

8 Therefore, the government hereby moves for an order directing  
9 the court reporter to review her notes and / or any tapes to clarify  
10 whether the Court used the term "clearly improbable" and, if  
11 appropriate, produce a corrected transcript to then be filed with  
12 the clerk's office of the district court in the same manner as  
13 transcripts are regularly filed for appeal.

14 Respectfully submitted,

15 MCGREGOR W. SCOTT  
16 United States Attorney

17 /s/ Anne Pings

18 By: \_\_\_\_\_  
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20 Assistant U.S. Attorney  
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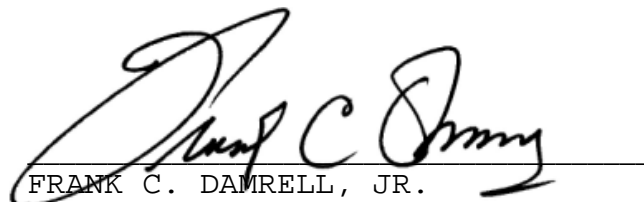
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10 UNITED STATES OF AMERICA, ) Cr. S-03-0103-FCD  
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KAMALJIT SINGH KHERA, ) APPELLATE PROCEDURE 10(e)  
14 )  
Defendant. )  
15 )

16 Upon consideration of the government's motion, it is hereby  
17 ordered, pursuant to Fed. R. App. P. 10(e), that the court reporter  
18 shall review her notes and / or any tapes of the sentencing  
19 proceeding on January 30, 2006, to clarify whether the Court used  
20 the term "clearly improbable" or "clearly and probable" and, if  
21 appropriate, produce a corrected transcript to then be filed with  
22 the clerk's office of the district court in the same manner as  
23 transcripts are regularly filed for appeal.

24 **IT IS SO ORDERED.**

25 DATED: February 28, 2007  
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FRANK C. DAMRELL, JR.  
UNITED STATES DISTRICT JUDGE